

[Waiver 1997-5]

MEMORANDUM

June 3, 1997

To: W. Van Aller
Communications Systems Engineer
Department of Information Systems & Telecommunications

From: Montgomery County Ethics Commission

RE: 800 MHz; Waiver

Willem Van Aller has requested a waiver from the conflict of interest provisions of §19A-11 of the Montgomery County Public Ethics Law. Van Aller requests this waiver in order to participate in the implementation stage of the County's project to acquire a new 800-Mhz public safety radio communications system. Bruce Romer, Chief Administrative Officer, and Donald V. Evans, Director, Department of Information Systems and Telecommunications (DIST), have submitted a memorandum supporting Van Aller's request.

Factual Background

The County has issued a Request for Proposal (RFP) to purchase an 800-MHz public safety radio communications system. In September 1996, the County retained the services of TRW to act as a consultant on this project. According to Donald Evans, TRW will act as a check and balance to in-house oversight over the 800-MHz project. TRW has assisted the County in preparing the RFP and will provide assistance in evaluating responses to the RFP.

Van Aller owns 960 shares of Motorola stock with a present value of about \$52,800. The Motorola stock produces income of about \$384 per year. Since its purchase in 1974, Van Aller has not bought or sold Motorola stock. In addition, Van Aller owns stock in GE. Van Aller obtained the stock while he was an employee of GE between 1960-1970. Van Aller owns some of the GE stock directly and other shares are held in a mutual fund named GE Savings and Security. The present value of the GE stock is about \$91,000 and produces yearly income of about \$2,800. Van Aller has not actively traded GE stock since 1970, but dividends from the GE Savings and Security Fund are reinvested in GE stock.

The County expects that Motorola and Ericsson Communications will submit proposals in response to the RFP. GE has an ownership interest in Ericsson.

In accordance with the County's Procurement Regulations, the Qualification Selection Committee (QSC), as a committee, will evaluate proposals and make a recommendation for a contract award. Donald Evans, as the Director of DIST, will review the QSC's recommendation and forward and forward a Department

recommendation to the Director of Procurement who will make the final decision regarding a proposed contract award. After a contract award is posted, the County will negotiate with the highest ranked offer or enter into a contract.¹

The County wishes Van Aller to serve on the QSC along with other individuals representing user agencies and the technical departments of the County government. Van Aller apparently will provide technical assistance in negotiating this contract. Finally, after the contract is executed, Van Aller will also apparently play a role in providing technical input regarding administration of the contract.

Van Aller, Donald Evans, and Bruce Romer all agree that Van Aller's expertise in radio communications is **unique** in the County government and without substitute.

Ethics Law

Section 19A-11 provides that a public employee must not participate in a matter that affects, in a manner distinct from its effect on the public generally, a business in which the employee has an economic interest. Furthermore, a public employee must not participate in a matter if the employee knows that a party in the matter is a business in which the employee has an economic interest.

The Ethics Commission may waive the prohibitions of §19A-11 if the Commission finds that "(1) the best interests of the County would be served by granting a waiver; (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and (3) granting the waiver will not give a public employee an unfair advantage over other members of the public." Section 19A-8(a).

Analysis

If Motorola or Ericsson, or both, submit a proposal in response to the RFP, §19A-11 would prohibit Van Aller from participating in evaluating proposals to the RFP.² If Motorola or Ericsson is the proposed awardee and eventually the County's 800 MHz contractor, §19A-11 would likewise prohibit Van Aller from participating in matters involving the negotiation and administration of the contract as well.

The Ethics Commission believes that, under the circumstances of this case, the requirements under §19A-8 for granting Van Aller a waiver from the prohibitions of §19A-11 have been met.³ Van Aller, with the support of the Director of DIST and the

¹ See Montgomery County Procurement Regulation §4.1.2.4

² For purposes of this waiver, the Ethics Commission assumes that GE may be affected by the County's award of a contract under the RFP and that GE is a potential party involved in this transaction under §19A-11(A) or (F).

³ In light of the Ethics Commission's conclusion that a waiver may be granted under §19A-8, the Commission has not addressed Donald Evans' suggestion that §19A-11(b)(1) applies. The Ethics Commission has not decided that Van Aller is the only public employee "required by law to act or is the only person authorized to act."

Chief Administrative Officer, has demonstrated that it is in the County's best interest for Van Aller to participate in the implementation stage of the 800 MHz project. Van Aller is the only County employee with the technical knowledge needed to implement the 800 MHz project. The Commission notes that, with respect to the selection of the proposed contractor, Van Aller's recommendations will be only one of many in making the final determination. Van Aller's technical knowledge will be, in part balanced by the technical assistance of TRW. Finally, although by County standards the acquisition of the 800-MHz radio communications system will involve significant amounts of County funds, the Ethics Commission believes it is highly unlikely that the value of Van Aller's stock will be affected one way or the other by actions taken by the County in this project.

Accordingly, the Ethics Commission concludes that: (1) it is in the best interests of the County to grant this waiver; (2) the importance to the County of Van Aller performing his official duties outweighs the potential harm of any conflict of interests; and (3) granting this waiver will not give Van Aller an unfair advantage over other members of the public.

Conclusion

The Ethics Commission grants a waiver to Van Aller for the purpose of participating in the evaluation of proposals submitted in response to the County's RFP for acquisition of an 800-MHz radio communications system, to provide the County with technical advice in the negotiation of a contract with the highest rank offeror; and to assist the County in monitoring any contract awarded under the RFP.

The waiver is issued pursuant to action taken by the Ethics Commission on May 13, 1997.

[signed]

Barbara McNally, Executive Secretary
Montgomery County Ethics Commission

cc: Bruce Romer, Chief Administrative Officer
Donald V. Evans, Director, DIST
Marc P. Hansen, Chief, Division of General Counsel, Office of the County
Attorney

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